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5 Attorney for Tri Counties Bank

6
7 UNITED STATES BANKRUPTCY COURT
8
9 EASTERN DISTRICT OF CALIFORNIA

10 In re:

11 JOANNE VONDRACEK

12
13 Debtor.

Case No. 11-44032-E-13C

DCNo. MWB-4

OPPOSITION TO MOTION TO VALUE

Date: December 6, 2011

Time: 2:00 p.m.

Judge: Ronald Sargis

Place: Courtroom 33

501 "I" Street

Sacramento, CA 95814

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18 INTRODUCTION

19 Tri Counties Bank is a secured party in this bankruptcy case. Tri Counties Bank holds a
20 consensual junior lien against the debtor's real property.

21 The debtors own real property commonly known as 5810 Fickett Lane, Paradise, CA
22 95969. Debtors' Declaration, ¶ 3. The debtors have senior, or unavoidable liens against the
23 property of \$116,000.00. Debtors' Declaration, ¶ 5. The debtors assert that the property has a
24 value as of the petition date of \$100,000.00. Debtor's Declaration, ¶ 4. The debtors' testimony
25 regarding value is not supported by any other evidence.

26 Tri Counties Bank holds a promissory note with an approximate balance of \$41,000.00.
27 Debtors' Declaration, ¶ 5; Request for Judicial Notice, Exhibit B. The promissory note is secured
28

1 by a second priority deed of trust against the property. Debtors' Declaration, ¶ 5. Tri Counties
2 Bank asserts that the property has a value of \$158,000.00. Declaration of Russell Sunn, ¶ 2;
3 Request for Judicial Notice, Exhibit A. Thus, based on Tri Counties Bank's asserted value, the
4 property value exceeds the value of the first mortgage by \$42,000.00.

6 ARGUMENT

7 Pursuant to *In re Zimmer*, 313 F.3d 1220, 1227 (9th Cir. 2002), the issue in this motion is
8 whether the second priority loan of Tri Counties Bank is wholly unsecured. Or, does, the value of
9 the debtors' property exceed the value of all the liens senior to it in priority? If so, the debtor may
10 treat the claim as a wholly unsecured claim in their Chapter 13 plan.

11 However, if the value of the debtors' property exceeds the value of all the liens senior in
12 priority by even a small amount, the claim constitutes a secured claim. 11 U.S.C. § 506(a); *Id.*
13 Then, the anti-modification provision of section 1322(b)(2) applies because the property is the
14 debtor's residence.

15 Here, the debtors' property value of \$158,000.00 exceeds the value of all liens senior in
16 priority by \$42,000.00. The liens senior in priority, according to the debtors' motion, total only
17 \$116,000.00. So, the second priority deed of trust of Tri Counties Bank is a secured claim, and
18 section 1322(b)(2) prevents the debtors from modifying it.

19 WHEREFORE, the court should deny the debtor's motion to value the secured claim of Tri
20 Counties Bank secured by the second deed of trust.

21 Dated: November 22, 2011

PHIL RHODES LAW CORPORATION

23 /s/ Philip J. Rhodes

24 PHILIP J. RHODES
25 Attorney for Tri Counties Bank